

PATENT COOPERATION TREATY
PCT Rec'd PCT/PTO 06 APR 2005
INTERNATIONAL PRELIMINARY EXAMINATION REPORT
(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 109422	FOR FURTHER ACTION	See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416).
International Application No. PCT/AU2003/001324	International Filing Date (day/month/year) 8 October 2003	Priority Date (day/month/year) 8 October 2002
International Patent Classification (IPC) or national classification and IPC Int. Cl. ⁷ G01N 33/52, 21/64, 33/02, 33/14		
Applicant THE WESTERN AUSTRALIAN CENTRE FOR PATHOLOGY AND MEDICAL RESEARCH et al		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 3 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of sheet(s).

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 23 March 2004	Date of completion of the report 1 February 2005
Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaaustralia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer ROSS OSBORNE Telephone No. (02) 6283 2404

I. Basis of the report**1. With regard to the elements of the international application:***

- ☒ the international application as originally filed.
- ☐ the description, pages , as originally filed,
 pages , filed with the demand,
 pages , received on with the letter of
- ☐ the claims, pages , as originally filed,
 pages , as amended (together with any statement) under Article 19,
 pages , filed with the demand,
 pages , received on with the letter of
- ☐ the drawings, pages , as originally filed,
 pages , filed with the demand,
 pages , received on with the letter of
- ☐ the sequence listing part of the description:
 pages , as originally filed
 pages , filed with the demand
 pages , received on with the letter of

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/fig.

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**1. Statement**

Novelty (N)	Claims 1-12	YES
	Claims 13	NO
Inventive step (IS)	Claims 1-12	YES
	Claims 13	NO
Industrial applicability (IA)	Claims 1-13	YES
	Claims	NO

2. Citations and explanations (Rule 70.7)

D1 - US 6362175

D2 - US 4541438

D3 - US 6060324

D4 - US 5736320

NOVELTY (N) Claim 13

None of the citations disclose a method for determining the antioxidant status and/or capacity to moderate oxidative stress by contacting the sample with a fluorescing porphyrin compound.

The closest prior art is D1 which discloses the use of phosphorescent porphyrin compounds for imaging molecular oxygen. Claim 13 is directed at a kit of components intended for use in the method of claims 1 or 6 but is not considered to be strictly limited to being used only in these methods and the feature of a relevant set of instructions is not considered as a feature that can convey novelty. D4 discloses the components of the claimed kit including fluorescing porphyrins such as tetraphenylporphyrin, although the intended use is different. It is therefore considered that claim 13 lacks novelty in the light of D4.

INVENTIVE STEP (IS) Claim 13

No single document or obvious combination of documents suggested the invention claimed in claims 1-12.

Claim 13 lacks an inventive step for the reasons given above.